THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.10738 OF 2005

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ORAL ORDER:

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This Writ Petition is filed seeking a declaration that the proceedings of the A.P. State Wakf Board, dated 9.03.2005, whereunder a Managing Committee was constituted for Shahi Mosque situated at Satulur village, Nadendla Mandal, Guntur District, as arbitrary and illegal.

A perusal of the impugned proceedings dated 9.03.2005 shows that the institution in question ie., Shahi Mosque, is a registered and notified Wakf. In exercise of the powers under Section 18 of the Wakf Act, 1995 (for short "the Act"), the 1st respondent-Wakf Board, constituted a Managing Committee to the said Wakf consisting of 11 members for a period of two years.

The writ petitioner claims that the said Wakf was under the management of Towliat Committee since a long time, and that he hails from the family of hereditary founders of the Towliat. It is also claimed that from 1988 onwards the family members of the petitioner along with the 2nd respondent and others constituted Towliat Committee, and that they were managing the affairs of the Wakf in question. However, subsequently, the 2nd respondent resigned on 4.04.2004 and the petitioner was elected as the President of the new Towliat Committee, the proceedings of which were sent to the Inspector Auditor, Wakf, Guntur. It is alleged that the 2nd respondent, having resigned on 4.04.2004, made an application to the 1st respondent requesting constitution of Managing Committee, and on the basis of the same, the impugned proceedings were issued constituting a new Managing Committee under Section 18 of the Act.

The contention of the petitioner is that the impugned proceedings, which were passed without prior notice to the petitioner, who is actually managing the affairs of the Wakf, are arbitrary and illegal and issued in violation of the principles of natural justice. It is also contended that Section 18 of the Wakf Act has no application at all, but the appointment for management of such Wakf can be made only under Section

63 or Section 65 of the Act. The further contention is that the 1st respondent has no jurisdiction to appoint a Managing Committee since the Towliat Committee is existing, for which the management shall be by succession from the original founders.

On behalf of the 1st respondent-Wakf Board, the Chief Executive Officer filed a counter-affidavit stating that the Wakf in question is a notified Wakf having attached property to an extent of Ac.121.08 cents for the maintenance of the Mosque. It is also stated that having received a report that a self-styled committee was looking after the affairs and that public in general were not satisfied with the functioning of the said committee, the 1st respondent-Wakf Board issued the proceedings constituting the Managing Committee under Section 18 of the Act in order to regulate the functioning of the Wakf, and to provide facilities and amenities to the public, which is in accordance with law.

The respondent No. 2 also filed a separate counter-affidavit on the same lines.

Heard the learned counsel for both the parties and perused the material on record.

It is to be noted that under Section 18 of the Wakf Act, the 1st respondent-Wakf Board is empowered to establish a committee for the supervision of the Wakfs, whenever it considers necessary either generally or for a particular purpose or for any specified area. The Wakf Board is also competent to determine the constitution, functions and duties and the term of office of such committees. In the light of the above said statutory provision, there cannot be any dispute about the power and authority of the 1st respondent to constitute the Managing Committee.

However, the learned counsel for the petitioner vehemently contends that since the petitioner is being continued as the President of the Towliat Committee, the 1st respondent ought not to have constituted a fresh Managing Committee without notice to him. He also contends that since admittedly, the impugned proceedings were issued on an application made by the 2nd respondent, the 1st respondent was bound to conduct an enquiry after affording opportunity to the petitioner.

On the other hand, the learned counsel for the respondents contended that

the so-called Towliat Committee has not been recognized under the statute, and therefore, even assuming that the petitioner was managing the affairs of the Mosque, it was without any authority, and therefore, he has no *locus standi* to challenge the Managing Committee constituted under the statute by the competent authority. The learned counsel also raised an objection as to the maintainability of the writ petition on the ground that the petitioner failed to exhaust the alternative remedy available under the statute.

That apart, the learned counsel for the 2nd respondent submits that the petitioner had already filed O.S.No.218 of 2004 on the file of the Court of the Junior Civil Judge, Chilakaluripet, in which he also sought for interim injunction, however, the said application was dismissed by order dated 21.12.2004. The learned counsel for the petitioner does not dispute the said fact.

It is also relevant to note that under Section 83 of the Wakf Act, all disputes or other matters relating to the Wakf or Wakf property shall be determined by the Tribunal constituted under the Act. In the circumstances, as rightly contended by the learned counsel for the respondents, without exhausting the alternative remedy provided under the Act, the petitioner cannot maintain this writ petition.

However, the learned counsel for the petitioner contended that since the impugned proceedings were passed in violation of the principles of natural justice, it is open to the petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, notwithstanding the availability of an alternative remedy under the Act. I am unable to agree with the said contention. As noted above, the Towliat Committee is not recognized under the Act, and no other material has been placed before this Court to show that the petitioner had acquired any right to manage the affairs of the Wakf in question. In the absence of any right, much less legal right to manage the affairs of the Walk in question, the petitioner cannot be permitted to complain that the impugned proceedings were in violation of the principles of natural justice.

Viewed from any angle, the writ petition is without any substance and misconceived.

The writ petition is accordingly dismissed. No costs.

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(G. ROHINI, J.)

1st February, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.10738 OF 2005

1st February, 2006.

Between:

Majeed Munwar. .. Petitioner.

And

A.P. State Waqf Board, represented

By its Chief Executive Officer, Nampally,

Hyderabad and 11 others. .. Respondents.